

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

NCMIC INSURANCE COMPANY

Plaintiff,

vs.

Case No.

**MICHAEL E. BROWN, BONES, INC.,
CHARLES DAILY, and ROSE ELEAN
ALVAREZ MARTINEZ**

Defendants.

COMPLAINT FOR DECLARATORY JUDGMENT

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff, NCMIC Insurance Company, files this complaint for declaratory judgment against Michael E. Brown, Bones, Inc., Charles Daily and Rose Elean Alvarez Martinez, hereinafter Defendants, pursuant to 28 U.S.C. Section 2201 and shows the Court the following:

I.
PARTIES AND SERVICE

1. NCMIC Insurance Company (“NCMIC”) is a company incorporated in the state of Iowa and has its principal place of business in Clive, Iowa. NCMIC issued a Professional Liability – Chiropractic Malpractice Policy, number MP00086887 to Michael E. Brown, D.C. and Bones, Inc., effective October 3, 2015 to October 3, 2016 (the “Policy”).

2. Defendant Michael E. Brown is an individual and resident of the State of New Mexico and may be served with process at 755 S. Telshor Blvd., Ste. 102-B, Las Cruces, New Mexico 88001.

3. Defendant Bones, Inc. is a corporation with its principal place of business in Dona Ana County, New Mexico and may be served with process through its registered agent, Michael E. Brown at 755 S. Telshor Blvd., Ste. 102-B, Las Cruces, New Mexico 88001.

4. Defendants Charles Daily and Rose Elean Alvarez Martinez (hereinafter “Daily” and “Martinez”) are residents of the State of New Mexico and may be served with process at 17 E Wagoneer, Arrey, New Mexico, 87930, Sierra County, New Mexico.

II.

JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to 28 U.S.C. Section 1332 as there is complete diversity of citizenship and the amount in controversy exceeds \$75,000. Specifically, a claim has been made for the limits of insurance available under the policy. Defendants have asserted this is \$600,000, not the \$200,000 per occurrence limit specified in the Policy.

6. As all Defendants are residents of the State of New Mexico, venue is proper in this Court pursuant to 28 U.S.C. 1391.

III.

STATEMENT OF THE CASE

7. This is an insurance coverage dispute. NCMIC is seeking a declaration from this Court that the per claim limit of \$200,000 applies to the claims asserted by Defendants Daily and Martinez. The Policy provides that NCMIC’s limit of liability for damages shall not exceed the per claim limit of liability regardless of the number of a) insureds; b) claimants or persons who sustain damages; c) claims or suits brought, policies issued by NCMIC; or d) number of policy periods during which treatment is rendered.

8. The Policy that was issued by NCMIC contains an aggregate limit of \$600,000. The Policy provides that NCMIC’s total liability for all damages during a policy period shall not exceed

the Policy Aggregate Limit of Liability regardless of the number of a) claims; b) insureds; c) claimants or persons who sustain damages; d) policies issued by NCMIC; or e) number of policy periods during which treatment was rendered.

9. On March 10, 2017, Defendants Daily and Martinez filed suit against Defendants Michael E. Brown and Bones, Inc. as well as Rio Grande Chiropractic Center and Mesilla Valley Chiropractic Center in Dona Ana, County, New Mexico, Cause No. D307-Cv-2017-00672 (hereinafter “Underlying Litigation”).

10. In the Underlying Litigation, Defendants Daily and Martinez allege Daily became a patient of Michael E. Brown and Bones, Inc. and remained a patient from October 2015 through at least March 29, 2016. Daily and Martinez allege that during this time, Michael E. Brown and Bones, Inc. injected Daily with homeopathic substances. Daily and Martinez allege injuries as a result of these injections.

11. Defendants Daily and Martinez contend that the limits of liability under the Policy for the injuries complained of in the Underlying Litigation are a total of \$600,000, not \$200,000.

12. NCMIC maintains that the per claim limit under the Policy is \$200,000.

IV. **CLAIM FOR DECLARATORY RELIEF**

13. Pursuant to the 28 U.S.C. Section 2201, a justiciable controversy exists between NCMIC and Defendants. NCMIC asserts it is entitled to a declaration of its rights for the purpose of determining the applicable per claim limit of liability, for which NCMIC asks for a declaratory judgment of this Court.

V. **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests Defendants be cited to answer herein and that this Court

declare the rights and obligations of the parties to this lawsuit and specifically that Defendants are only entitled to the Per Claim Limit of Liability of \$200,000 as provided for in the Policy. Additionally, Plaintiff requests any other or further relief as the Court deems just and proper.

Respectfully submitted,

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